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CC: BOS

RE. ART. 24

DECLARATION OF COVENANTS AND GRANT OF EASEMENTS

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THIS DECLARATION OF COVENANTS AND GRANT OF EASEMENTS (the "Declaration") is made this 12th day of April, 2004, by, between and among John M. Anderson and Robert E. Anderson, Trustees of the Wedgewood Realty Trust, a Massachusetts realty trust created under a Declaration of Trust dated July 6, 1983, and recorded in the Middlesex South Registry of Deeds at Book 15114, Page 247, with its principal place of business at 20 Main Street, Acton, MA (hereinafter referred to as the "Grantor"), individually and on behalf of the Trust and its trustees, beneficiaries, successors and assigns, and the Town of Acton, a municipal corporation, having its principal office at Town Hall, 472 Main Street, Acton MA 01720 (hereinafter referred to as the "Town").

WHEREAS, the Grantor owns the real property located at and known as 18-22 Main Street, Acton, MA, which consists of Parcels 21-3, 33, 48, 20, 32, 35, 57, 83 and 84 on Assessors' Map I-2 as shown on the January 2003 edition of the Town Atlas (collectively, the "Locus"), all as more fully described on Exhibit A, attached hereto and incorporated herein by reference.

WHEREAS, Grantor owns those portions of the Locus shown as Parcel 20, 32 and 35 on Assessor's Map I-2 by Certificate of Title No. 169451 filed with the Middlesex South Registry District of the Land Court in Book 977, Page 101.

WHEREAS, Grantor owns those portions of the Locus shown as Parcel 21-3, 33, 48 and 57 on Assessor's Map I-2 by a deed filed with the Middlesex South Registry of Deeds in Book 15114, Page 250.

WHEREAS, Grantor owns those portions of the Locus shown as Parcel 83 on Assessor's Map I-2 by a deed filed with the Middlesex South Registry of Deeds in Book 15316, Page 533.

WHEREAS, Grantor owns those portions of the Locus shown as Parcel 84 on Assessor's Map I-2 by a deed filed with the Middlesex South Registry of Deeds in Book 17178, Page 196.

WHEREAS, the Town and the Grantor have entered into certain Contract (the "Contract") dated April, 12 2004.

WHEREAS, the Contract requires the Grantor, *inter alia*, to grant easements to the Town affecting portions of the Locus for rail-trail purposes.

WHEREAS, the Town is in the process of designing, acquiring real property for and constructing a portion of the Assabet River Rail-trail along a portion of the former Boston & Maine railroad right-of-way in Acton.

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WHEREAS, the Easement Area, as defined below, will be incorporated as a portion of the Assabet River Rail-trail and will affect portions of the Locus.

NOW THEREFORE, Grantor and Town hereby declare that the Locus is and shall be subject to the covenants, easements and restrictions hereinafter set forth:

1. Rail-Trail Easement. Grantor hereby grants to the Town the non-exclusive perpetual right and easement to locate, construct, reconstruct, erect, install, grade, re-grade, surface, resurface, excavate, operate, maintain, patrol, inspect, repair, replace, alter, redesign, reroute, extend, connect to adjacent facilities and remove a so-called rail-trail, bicycle path, walking path, jogging path, and general recreational space, and all improvements ancillary thereto (the "Rail-trail"), on, over, under, across, along, through and within those portions of the Locus as shown on a plan entitled "Acton, Massachusetts, Easement Area" dated _____, 2004, by Earth Tech, 196 Baker Avenue, Concord, Massachusetts 01742, recorded contemporaneously herewith (the "Easement Area") and more fully described in Exhibit B, attached hereto and incorporated herein by reference. ***[Drafting Note: The Easement Area shall include (a) Parcel 83 from the Maynard-Acton Town Line to and joining up with the easement area described in paragraph (b) hereof, such easement at its northerly terminus, to be coincident with and include the western boundary of the ROW Strip for the entire length of 98.55' along the radius shown on the draft plan prepared by Earth Tech for the Town attached hereto, and (ii) those portions of the Locus substantially in the location shown on the plan prepared by Earth Tech for the Town attached hereto with any changes to said location as are satisfactory to the Board of Selectmen]***

The Rail-trail within the Easement Area may consist of a combination of unimproved portions and improvements consisting, without limitation, of trails, pathways, walkways, landscaping, benches, lighting, utilities, and signage, constructed of natural and/or man-made materials, including, without limitation, pavement, concrete, wood, stone, gravel, metals, plastics, geo-textiles, composites and other construction materials suitable for the Town's intended purpose.

2. Rail-trail Use. The Easement Area shall be for the non-exclusive recreational use of the Town, its inhabitants, and the general public, in accordance with the provisions of M.G.L. c. 21, s. 17C, and associated emergency, public safety, and construction and maintenance purposes. Without limiting the generality of the foregoing, such use shall include all purposes for which rail-trail corridors are used in the Commonwealth of Massachusetts including, without limitation, all forms of pedestrian, bicycle and other non-motorized recreational transportation. No commercial use shall be made of the Easement Area by the Town. Otherwise the use of the Easement Area shall be governed by such reasonable rules and regulations as the Town's Board of Selectmen may from time to time promulgate.

3. Design, Construction and Maintenance Easement. Grantor hereby grants to the Town a perpetual and non-exclusive right and easement for access by pedestrians, vehicles and equipment to the Easement Area over, across and along all or any portion

of the Locus and such other land of the Grantor as is reasonably necessary from time to time to access the Easement Area for the design, construction and maintenance of the Rail-trail permitted in accordance with Section 1 of this Declaration.

4. Culvert Maintenance. The Grantor and the Town acknowledge that the Rail-trail shall be constructed over a culvert located on or near Parcel 83, which drains a wetland area on Parcel 32 onto Parcel 48. The Grantor and the Town further acknowledge that the water level may rise across Grantor's parking lot and loading areas and/or the Easement Area, Rail-trail, and/or access thereto from such circumstances as flood conditions, an event which causes the culvert to become blocked or otherwise malfunction, or a condition caused by beaver or other wildlife in the area. The Grantor and the Town acknowledge and agree that neither shall assert any claim against the other with respect to such flooding conditions affecting the Locus and/or the Easement Area. In the event that all or a portion of the Locus and/or the Easement Area or its access becomes flooded, the Grantor or the Town may take any steps necessary to prevent or mitigate such flooding and resulting destruction of and damage to the Locus, the Easement Area, the Rail-trail, and/or access thereto. Without limitation, the Grantor or the Town may take any reasonable action with respect to the maintenance of the culvert, control of the beaver population or other action it deems necessary to prevent the destruction of and damage to the Easement area, Rail-trail, or access thereto. In addition, the Town may periodically inspect and maintain the culvert as it deems appropriate, with access permitted in accordance with Section 3 of this Declaration

5. Unobstructed Use. Without limitation, the Grantor acknowledges that the Easement Area bisects Parcel 20 and Parcel 32, dividing Grantor's parking area to the rear of the main building on the property (located on Parcels 20, 21-3, 33, 83 and 84) from an additional parking area located primarily on the rear portion of Parcel 20 west of the proposed Rail-trail. Grantor hereby covenants and agrees that Grantor shall keep the Rail-trail and access thereto free and clear of all vehicle, equipment, debris, fencing, or other obstruction so that use of and access to the Rail-trail by those permitted hereunder is available at all times.

6. Additional Provisions

6.1 Limitation on Access. This Declaration is not intended to permit the Town or users of the Rail-trail to enter upon or park upon any portion of the Locus outside the Easement Area, except for the design, construction and maintenance rights and easements granted in accordance with Section 3 and 4 of this Declaration. The Town may erect such fencing, gates or other access controls along those portions of the Locus within the Easement Area as it deems necessary to implement this provision, provided that Grantor shall control and maintain all access gates such that they do not interfere with the rights and easements otherwise granted in accordance with this Declaration or pose a safety risk to those using the Rail-trail. The Town may periodically police the Locus and the Rail-trail to ensure compliance with this provision.

6.2 Section Headings. Section headings herein are for reference and convenience only, and shall not affect the interpretation hereof.

6.3 No Waiver. Failure on the part of the Grantor or the Town to notify in writing the other of any action or inaction on the part of any other such party, no matter how long the same may continue, shall not be deemed to be a waiver of any such party's rights hereunder. Furthermore, it is covenanted and agreed that no waiver, at any time, of any provision of this section by any such owner shall be construed as a waiver of any other provisions hereof and that a waiver, at any time, of any of the provisions hereof shall not be construed at any subsequent time as a waiver of such provisions.

6.4 Severability. If any term or provision of this Declaration is held to be invalid or unenforceable, the remainder of this Declaration shall not be affected thereby and each other term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

6.5 Amendment. This Declaration may be modified or amended only by agreement, in writing, signed by the Grantor or Grantor's successors and assigns and the Town.

6.6 Binding Effect. The terms and covenants of this Declaration, including but not limited to the rights, privileges, obligations and conditions set forth or referenced herein, shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

6.7 Event of Default. If any party burdened by any of the easements set forth herein fails to perform any of its repair or maintenance obligations with respect to an Easement Area within thirty (30) days (except in the case of an emergency) after receipt of written notice from the benefited party, then such failure shall be a default hereunder. Any owner of the Locus or a portion thereof shall only be liable for defaults hereunder occurring during such owner's period of ownership.

6.8 Successors and Assigns. All references to Grantor and Town made herein shall include their respective heirs, successors and assigns.

6.9 Governing Law. This Declaration shall be governed by the laws of the Commonwealth of Massachusetts. The provisions of this Declaration shall be binding upon all the parties having or acquiring any right, title or interest in any of the Locus. Each owner of the Locus or any portion thereof or interest therein, by accepting delivery of a deed to the Locus, or any portion thereof or interest therein, subject to this Declaration, agrees and covenants that the terms and conditions of this Declaration are reasonable and agrees to be bound thereby.

Executed as an instrument under seal the day and year first above written.

TOWN OF ACTON, MASSACHUSETTS,
By its Board of Selectmen,

Walter H. Foster, Chairman

Peter K. Ashton

William H. Shupert, III

F. Dore' Hunter

Robert A. Johnson

WEDGEWOOD REALTY TRUST

By: John M. Anderson, Trustee

By: Robert E. Anderson , Trustee

TOWN ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this ____ day of _____, 2004, before me, the undersigned Notary Public, personally appeared each of the foregoing named members of the Board of Selectmen of the Town of Acton, proved to me through satisfactory evidence of identification, which was: examination of _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as the foregoing named members of the Board of Selectmen of the Town of Acton, a municipal corporation.

_____(official signature and seal of notary)

My commission expires _____

OWNER ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this ____ day of _____, 2004, before me, the undersigned Notary Public, personally appeared John M. Anderson and Robert E. Anderson, proved to me through satisfactory evidence of identification, which were _____, to be the persons whose name is signed on the preceding or attached document, and acknowledged to me that each signed it voluntarily for its stated purpose as a Trustee of the Wedgewood Realty Trust.

_____(official signature and seal of notary)

My commission expires _____

EXHIBIT A

Description of the Locus (Burdened Property)

[INSERT PROPERTY DESCRIPTION]

EXHIBIT B

Description of the Easement Area

[INSERT EASEMENT AREA DESCRIPTION (Earth Tech should provide)]

CERTIFICATE OF TRUSTEE(S)

John M. Anderson and Robert E. Anderson, Trustees of Wedgewood Realty Trust, under Declaration of Trust dated July 6, 1983, and recorded in the Middlesex South Registry of Deeds at Book 15114, Page 247, hereby certify that John M. Anderson and Robert E. Anderson are the sole Trustees of said Trust; that said Trust has not been altered, amended, revoked or terminated; that the Beneficiaries of said Trust are of legal age; that the Beneficiaries of said Trust are not deceased, under legal incapacity, or a party to any bankruptcy or other insolvency proceeding; and that the Beneficiaries of said Trust have, by written instrument of even date herewith, authorized and directed the Trustee(s) to execute a Declaration of Covenants and Easements running with the land for the benefit of the Town of Acton, MA, concerning the real property located at and known as 20 Main Street, Acton, MA, which is shown as Parcels 21-3, 33, 48, 20, 32, 35, 57, 83 and 84 on Assessors' Map I-2 (collectively, the "Property"), and to do all acts and to execute and deliver any and all documents and instruments necessary or required to comply with the terms and conditions thereof; that the Trust is the sole owner of the Property; that the sole Trustee of the Trust is not the sole beneficiary of the Trust and that the joint Trustees of the Trust are not the joint beneficiaries of the Trust; and that John M. Anderson hereby accepts appointment as Trustee of the Trust.

Executed under seal this _____ day of _____, 2004.

John M. Anderson, Trustee

Robert E. Anderson , Trustee

Commonwealth of Massachusetts
Middlesex, SS.

_____, 2004

On this _____ day of _____ April, 2004, before me, the undersigned Notary Public, personally appeared John M. Anderson and Robert E. Anderson, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that each signed it voluntarily for its stated purpose as Trustee of the Wedgewood Realty Trust.

_____ (official signature and seal of notary)

My commission expires _____